

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY SOLIS,

Case No.: 1:20-cv-5105 (AKH) (SLC)

Plaintiff,

-against-

GUARD MANAGEMENT SERVICE CORP., 666
FIFTH ASSOCIATES LLC, LOCAL 32BJ, SERVICE
EMPLOYEES INTERNATIONAL UNION, and
PATRICK BUSGITCH,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER
VOLUNTARILY DISMISSING THE CLAIMS AGAINST ALL DEFENDANTS EXCEPT
666 FIFTH ASSOCIATES LLC AND FOR AN EXTENSION OF TIME TO SERVE**

Dated: Forest Hills, New York
May 2, 2021

Respectfully submitted,

SHALOM LAW, PLLC

_____/s_____
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Attorneys for Plaintiff

PLAINTIFF IS ENTITLED TO PURSUE ITS CLAIMS AGAINST THE REMAINING DEFENDANT

Plaintiff Anthony Solis (hereinafter the “Plaintiff” or “Solis”) submits this motion for an Order voluntarily dismissing the claims against all Defendants except 666 Fifth Associates LLC (hereinafter “666 Fifth”). Plaintiff settled its claims against all Defendants except 666 Fifth, who has never appeared in this case to date. While all the remaining defendants waived service, 666 Fifth never did so. Plaintiff thus requests both that this case be restored as to 666 Fifth only, and for this Court to grant an extension of time of thirty (30) days to effectuate service on 666 Fifth.

At the outset of this case, counsel for Defendants Guard Management Service Corp. (“GMSC”) and Patrick Busgitch (“Busgitch”) (collectively hereinafter the “Settling Defendants”) denied that they represented 666 Fifth when asked to waive service on its behalf by Plaintiff. As an initial matter, a summons was issued by the Clerk as to 666 Fifth. See Docket Entry 12. Plaintiff thereafter timely wrote within sixty (60) days of this Court’s Order of Dismissal dated October 28, 2020 to apply for restoration and extend its time to serve 666 Fifth. See Docket Entries 25-26. The Settling Defendants and Local 32BJ executed a Stipulation of Voluntary Dismissal and filed same with the Court on December 14, 2020. See Docket Entry 28.

Rule 41 of the Federal Rules of Civil Procedure (hereinafter referred to as “Rules” or “Rule”) provides that an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. See Fed. R. Civ. P. 41(a)(2). Plaintiff respectfully submits that there is no basis to deny him the relief he seeks. See Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd., 2013 WL4525323, *12 (E.D.N.Y. 2013) (noting, in the context of objections to settlement that “prejudice has only been found to exist in rare circumstances, such as where the settlement agreement strips a non-settling party of a claim for contribution or indemnification, or invalidates a non-settling party’s contract rights”).

The settlement agreement between Plaintiff and the remaining Defendants in no way constitutes any prejudice to the 666 Fifth. As such, Plaintiff is entitled to an Order voluntarily dismissing all the defendants except 666 Fifth, extending Plaintiff's time to serve 666 Fifth, and otherwise allowing Plaintiff to proceed with its claims against 666 Fifth.

CONCLUSION

Based upon the foregoing, Plaintiff respectfully submits that the instant motion should be granted together with such other and further relief as this honorable Court deems just, equitable, and proper.

Dated: Forest Hills, New York
May 2, 2021

Respectfully submitted,

SHALOM LAW, PLLC

/s

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VIA SECRETARY OF STATE

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